

§ 25-2A-405. Excused performance.

Subject to G.S 25-2A-404 on substituted performance, the following rules apply:

- (a) delay in delivery or nondelivery in whole or in part by a lessor or a supplier who complies with paragraphs (b) and (c) is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency, the nonoccurrence of which was a basic assumption on which the lease contract was made, or by compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.
- (b) if the causes mentioned in paragraph (a) affect only part of the lessor's or the supplier's capacity to perform, he shall allocate production and deliveries among his customers but at his option may include regular customers not then under contract for sale or lease as well as his own requirements for further manufacture. He may so allocate in any manner that is fair and reasonable.
- (c) the lessor seasonably shall notify the lessee and in the case of a finance lease the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under paragraph (b), of the estimated quota thus made available for the lessee. (1993, c. 463, s. 1.)